BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission on its own motion to conduct an investigation on intrastate switched access charge policies and regulation codified in <u>Neb. Rev. Stat</u>. Section 86-140)	**Application No. C-4145/NUSF-74/ PI-147** **COMMENTS OF SPRINT NEXTEL ON ORDER OPENING DOCKET AND SEEKING COMMENT**

Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners, collectively, "Sprint Nextel," hereby submits its comments in the above-captioned matter. Sprint Nextel maintains that intrastate access rates in Nebraska remain too high, even at current levels, and need to be further reduced. At a minimum, no rate increases by any incumbent local exchange carrier (ILEC) should be allowed until the Commission has completed a review that ensures that the rates will be based on forward-looking economic costs.

I. EXCESSIVE INTRASTATE ACCESS RATES ARE HARMING COMPETITION AND CONSUMERS UNNECESSARILY

It is undeniable that access charges that are too high will harm both competition and consumers. All carriers providing voice communication services in Nebraska must use switched access to terminate non-local calls to the ILECs' customers. This includes both IXC traffic and traffic originated by wireless providers, who must pay terminating access on wireless calls to landline customers when such calls cross Major Trading Area ("MTA") boundaries, even though wireless carriers do not collect access charges on toll calls received from other carriers, including ILECs. Because these ILEC switched access services are an essential input to the services other carriers are providing, these other carriers' input costs are increased by inflated ILEC access rates.

Consumers have more choices for their voice communications needs than when the ILECs were the monopoly providers. Most consumers have a choice among alternative carriers providing cable telephony, traditional competitive LEC (CLEC) service, wireless service, and Voice over Internet Protocol (VoIP) service. But each of these alternative carriers must pay inflated access rates to Nebraska ILECs. Because these carriers must cover their input costs to earn a profit, inflated intrastate switched access costs are raising the prices of competitive retail offerings available in the market. Consumers are not receiving the best offerings in the market because high switched access rates, originally meant to keep ILEC local service affordable, are now inflating the retail rates for alternative providers of local service. Competing carriers cannot compete on an equal footing with ILECs if the ILECs are permitted to impose on their competitors input costs that are far above the actual cost of providing those functions. If the switched access rates are reduced, as Sprint Nextel believes they should be, the market will provide consumers with better service offerings to compete with the incumbent providers.

Furthermore, the justification historically used to support high access rates no longer exists. Access prices were historically inflated as a mechanism to subsidize the price of basic local service in a regulated monopoly setting. But this interplay between local service rates and intrastate access services rates was established long before ILECs developed the ability to collect revenues from numerous other services provisioned over the same network on which they provide local exchange and exchange access services. The original access rates were also set long before ILECs were permitted new retail revenue opportunities through retail pricing flexibility. Within their service territories, ILECs now offer wireline long distance, numerous new calling features, broadband and video services.[1] These services are often bundled together to provide the consumer's complete service needs. The average revenue per user (ARPU) the ILECs collect continues to expand. For example, Qwest reported in its 4th quarter 2008 financial reports that consumer ARPU had reached $56.78 up from $46.76 reported in the 1st quarter of 2006, a 21% increase over this nearly two year period.[2] This historic trend of retail revenue growth and the potential for further growth in the future makes the anti-competitive collection of subsidies from competing carriers in the form of grossly inflated access rates simply unnecessary. The ILECs can and should collect the costs of providing retail services from the customers purchasing those retail services instead of collecting a portion of those costs from competitors by charging inflated rates for monopoly switched access. This change is essential to developing a level competitive playing field for all service providers.

II. THE COMMISSION SHOULD REVISE THE BASIS ON WHICH IT SETS INTRASTATE ACCESS CHARGES

As the Commission (and indeed Qwest itself) has acknowledged, intrastate access rates are set above cost and still contain implicit subsidy.[3] Because these above-cost rates are having harmful effects on competition and consumers, as explained above, the Commission should take steps to ensure that access rates are reduced to cost based levels. Just as the Commission in NUSF-26 set the amount of state universal service support

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[1] Even if video services are not offered over the same local network as voice service, the margins on the services sold provide a contribution toward the cost of that local network.

[2] These data are taken from page 8 of the historical quarterly results reported by Qwest as part of its 4th quarter 2008 financial reports, available online at http://media.corporate-ir.net/media_files/irol/11/119535/Q408/4Q08QuarterlyFinancialsFinalValues.pdf. While they represent total company rather than Nebraska-specific results, there is no indication that the results would be significantly different in Nebraska alone.

[3] See *In the Matter of the Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates,* C-3945/NUSF-60.02/PI-138, Order (February 3, 2009) at p. 7.

based on the economic cost of providing service in high cost areas,[4] the Commission should now finally take the steps that will ensure that access charges also are set based on the forward-looking economic cost of providing access service. Thus, the rates should be set based on the incremental cost required to provide an access minute, and should be extremely low. Given the additional services that can be provided using the same network over which the ILEC provides access services, any reduction in access revenue should be more than made up by revenues from these additional services.

As a first step, at a minimum the Commission should require ILECs to set their intrastate access rates at the same level as interstate access rates. This will be a significant first step toward bringing access rates to cost, and will reduce any incentives for regulatory arbitrage. Since the provision of both interstate and intrastate access service uses exactly the same functions and features of the network, there is no reason why intrastate access charges should be any greater than interstate access charges. In addition, the Commission should require the same of CLECs. Just as there is no reason for ILECs to have a disparity between interstate and intrastate rates, the same holds true for CLECs.

III. THE COMMISSION SHOULD NOT PERMIT RATE CHANGES BASED SOLELY ON CURRENT REPORTED ILEC EARNINGS

Even if the Commission decides to maintain the current access regime, no access rate increases should be implemented without a showing by the ILEC that it is unable to recover its costs from its own customers. The Commission stated in the NUSF-26 docket that it would "continue to employ an earnings test to determine that NUSF support does

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[4] Support was set using costs developed from the Benchmark Cost Proxy Model, an independent model of forward-looking economic cost. *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism,* NUSF-26, Findings and Conclusions (November 3, 2004).

not exceed the level required by NETCs to recover their costs," and determined that the NUSF-EARN form would be used for that purpose.[5] However, the current NUSF-EARN form used by the ILECs to report their costs and revenues is inadequate to ensure the correct costs and revenues are reported for access purposes. The rates that the Commission should consider in assessing earnings are the revenues from all services provided using the network that provides intrastate access, and should include all sources of revenue, both regulated and non-regulated. The NUSF-EARN form includes single lines for miscellaneous and non-regulated revenues, but these should be expanded to include specific sub-categories such as broadband, video, bundles, and optional calling features to ensure that all relevant revenues are captured. In addition, the current NUSF-EARN form reflects the ILEC's embedded costs and, presumably, allocated costs under the FCC rules, not forward-looking economic costs. The Commission determined in the NUSF-26 docket that the Support Allocation Methodology (SAM)'s use of the Benchmark Cost Proxy Model (BCPM) to estimate forward-looking loop costs was reasonable for purposes of determining NUSF support.[6] Likewise, for access rate purposes, the relevant costs should be the forward-looking costs, not the ILEC's embedded costs.

In addition, the current NUSF-EARN form does not require the ILEC to justify the basis on which it divides the costs it reports between regulated and non-regulated operations and between the state and interstate jurisdictions. This is especially important in the case of Qwest, because Qwest was recently granted forbearance by the Federal Communications Commission (FCC) from using the FCC's existing Part 36 (Separations)

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[5] *Id.* at para. 61.
[6] *Id.* at paras. 45-51.

and Part 64 (Regulated / Non-Regulated cost allocation) rules. Before Qwest is allowed to use these rules (or any alternative methodology) to allocate its costs for the purposes of setting intrastate access rates, Qwest should be required to demonstrate that the use of the FCC rules (or the alternative methodology) is relevant in the context of intrastate access. The Commission should assess whether the methodology is reasonable. At a minimum, this should include a reassessment of how costs are allocated to non-regulated services such as broadband or video services.

IV. CONCLUSION

The Commission should set intrastate access charges based on the forward-looking economic cost of providing the service. The additional costs to the ILEC of providing intrastate access should be minimal, and intrastate access charges should reflect this reality. As an initial step, the Commission should at a minimum require all ILECs and CLECs to reduce their intrastate access rates to parity with interstate access rates. The NUSF-EARN form should not be used as a basis to justify access rate increases because it is not adequate to ensure the proper costs and revenues are reported. However, if the Commission were to decide to use the NUSF-EARN form for reporting ILEC costs and earnings, it must revise its procedures for assessing the costs reported on that form to ensure that the costs are reported correctly.

Respectfully submitted this 23rd day of April, 2009.

SPRINT NEXTEL

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of April, 2009, one original, one copy and one electronic copy of the Comments of Sprint Nextel on Order Opening Docket and Seeking Comment in Application No. C-4145/NUSF-74/PI-147 were hand delivered to:

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